

Internal Revenue Service
memorandum

CC:TL-N-3664-89

Br4:HGSalamy

date: MAR 16 1989

to: District Counsel, Milwaukee MW:MIL

from: Assistant District Counsel (Tax Litigation) CC:TL

subject: Validity of Assessment - [REDACTED]

This is in response to your January 5, 1989, request for tax litigation advice. After consideration of the present status of the matter and in confirmation of the telephonic contact between our offices, we agree with your conclusion in this case that the Service should consider the assessment valid.

ISSUE

Should the Service consider the assessment in this case valid where (1) an untimely petition from a proper notice of deficiency is filed with the Tax Court (and the petition dismissed for lack jurisdiction), (2) an assessment is made after the 90-day restriction period in the notice of deficiency, (3) the assessment is paid in full and (4) the period for making another assessment has now expired.

CONCLUSION

The Service should consider the assessment valid.

DISCUSSION

We agree with your opinion that the Service should not abate the assessment. Putatively, once the 90-day restriction period in the notice of deficiency has expired, the Service is free to make the assessment. Under the circumstances of this case, we believe it is the taxpayers who now must pursue the refund route if they believe that the assessment was invalid.

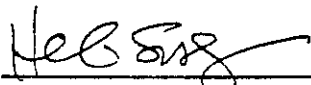
Since you informed us that this response would be satisfactory to you, we will defer to a later date the need to address any specific arguments that may be made as to why the assessment is not valid, and, whether or not a refund may be

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ordered if the taxpayers have not, in fact, overpaid their tax liability for the year. It is unclear whether Rev. Rul. 85-67, 1985-1 C.B. 364 would be applicable in such a situation. If you require our further views, please let us know.

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By:


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